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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re A.S., a Person Coming Under the Juvenile Court Law.	B304450
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. ASHLEY S., Defendant and Appellant.	Los Angeles County (Super. Ct. No. 19CCJP02108)

APPEAL from an order of the Superior Court of Los Angeles County, Jean M. Nelson, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kim Nemoy, Assistant County Counsel, and Kimberly Roura, Senior Deputy County Counsel, for Plaintiff and Respondent.

A.S. became a dependent of the juvenile court in 2019. Appellant Ashley S. (Mother) was unable to care for A.S., an infant facing a risk of serious harm from Mother’s mental illness and drug use. (Welf. & Inst. Code, § 300, subd. (b).)¹ Mother now challenges the court’s refusal to give her custody of A.S. at the six-month review hearing. The record shows that Mother has not made sufficient progress to eliminate the conditions leading to A.S.’s removal. The court ordered monitored and unmonitored visits, allowing Mother to improve her parenting skills while protecting A.S.’s safety and well-being. We affirm.

FACTS AND PROCEDURAL HISTORY

In *In re A.S.* (May 1, 2020, B298229) [nonpub. opn.], we described the circumstances that led to A.S. being declared a dependent of the court. We summarize the facts below.

Mother gave birth to A.S. in January 2019.² Two months later, Mother was hospitalized under section 5150. Unable to cope with A.S.’s crying, she “was screaming at the child to ‘shut up’ and observed [A.S.] stiffen up in fear.” Mother did not want to harm A.S. and “called for help before things ‘escalated.’” In the emergency room, Mother yelled obscenities at a social worker from respondent Department of Children and Family Services (DCFS), who arrived to take A.S. into protective custody while Mother was hospitalized. (*In re A.S.*, *supra*, B298229.)

Mother has a history of mental illness and attempted suicide. She is estranged from her family and smokes marijuana to calm herself. Mother took A.S. to the hospital a month after

¹ Undesignated statutory references are to the Welfare and Institutions Code.

² All months cited in this opinion refer to the year 2019.

birth; the baby was dehydrated and so underweight that her ribs were showing. Mother told hospital staff she “had thoughts of hurting the baby” but did not act on them. (*In re A.S., supra*, B298229.)

Mother told the social worker she was filled with anxiety and had yelled at A.S., who would not stop crying despite being fed, rediapered, and given attention. Before police came to take her to the hospital, Mother was on the phone with psychiatric emergency services for over seven hours. (*In re A.S., supra*, B298229.)

After A.S. was returned to her care, Mother called DCFS incessantly to threaten any social worker who might come to her home to assess A.S.’s welfare. Concerned for Mother’s mental health, DCFS obtained a removal order for A.S. from the trial court. Mother cursed and threatened the social worker who carried out the order. DCFS categorized A.S. as being at “high risk” for abuse. It filed a petition alleging that A.S. is at risk of serious harm because Mother is unable to provide regular care or protect or supervise A.S. owing to mental illness, postpartum depression, and use of marijuana. (*In re A.S., supra*, B298229.)

The court detained A.S., stating that Mother had to be placed on an involuntary hold because she presented a danger to herself or others, and has started medication for a “type of problem [that] just doesn’t go away after several days.” Until Mother is fully diagnosed and treated, she poses a substantial threat to A.S.’s physical and emotional health. The court authorized monitored visits at the DCFS office because Mother made threats against A.S.’s caregivers. (*In re A.S., supra*, B298229.)

In April, DCFS reported that Mother did not understand why she was involuntarily hospitalized. She felt overwhelmed and needs parenting help. At age 12, she was depressed from being bullied and attempted suicide. She said, “I do not have any family member or friend for support.” A.S.’s father has not seen A.S. or provided care or financial support. (*In re A.S., supra*, B298229.)

Mother felt better since starting prescribed medications and is in a program designed to promote parenting skills. She tested positive for marijuana. She visited A.S. three times per week for two hours at the DCFS office. She is excited to see the baby and is loving, caring, and nurturing. However, she became “really tense and nervous” when A.S. cries and “does not know how to deal with it or why [the] baby is crying.” Mother feels “safe and supported by having [DCFS] staff in [the] room with her” during visits. She is sad when visits end and frustrated that A.S. is bonding with the caregiver, who brought all of A.S.’s necessities to the visits. (*In re A.S., supra*, B298229.)

Mother participated in counseling and parenting programs but became agitated and stressed if A.S. cried. DCFS recommended that Mother improve her parenting skills and mental state before reunifying with A.S., who requires close supervision and great care in infancy. (*In re A.S., supra*, B298229.)

DCFS reported that Mother tested positive for marijuana in April and May. She did not disclose her marijuana use to her psychiatrist, who “highly does NOT recommend for mother to mix her current psychotropic medications with marijuana since that will prevent her having effective outcome from her medications to address her current mental health needs.” She “continues to

panic when [A.S.] starts crying during the visit.” Mother found her housemate intoxicated and passed out in the living room; he is cruel to her. Mother made “some progress” in the parenting program. (*In re A.S., supra*, B298229.)

Mother brought a stroller containing cat feces to a visit with A.S. A.S.’s maternal grandfather, who has a minimal relationship with Mother, told DCFS he found cat feces all around Mother’s home and asked DCFS to assess whether the home is safe for a baby. He voiced concern about Mother’s history of substance abuse. (*In re A.S., supra*, B298229.)

The court sustained the petition on May 23. It stated that the “evidence shows there is a mental health problem and it doesn’t simply go away, it takes time to address. And what is clear to me is that there is not enough evidence showing that the problem has fully gone away.” Though Mother was not currently at risk of harming herself or A.S., the court needed to see her progress in counseling. She still panics when A.S. cries. She did not tell her psychiatrist about her marijuana use and is being deprived of the full benefit of her prescribed medication. The court found that the unsanitary condition of Mother’s home “reflects a problem with [her] mental health” and is unsafe for a vulnerable child. (*In re A.S., supra*, B298229.)

The court declared A.S. a dependent, removed her from parental custody, and ordered Mother to participate in random drug testing; if any test is missed or positive, she must complete a substance abuse program. She must participate in a parenting program, attend psychological counseling, and take all prescribed medications. Visits with A.S. were monitored. (*In re A.S., supra*, B298229.)

Mother appealed. We concluded that substantial evidence supported the jurisdictional findings and the disposition order was within the scope of the court's discretion. Mother could not cope with a newborn and was involuntarily hospitalized. Her history, coupled with a lack of family support and use of a drug that interferes with prescribed medications, supported a finding that A.S. needs special protection until Mother can provide the care a baby requires. (*In re A.S.*, *supra*, B298229.)

After disposition, DCFS reported that A.S. is happy and comfortable in the home of her foster parents. Mother complies with court orders and continues to receive assistance during visits. She was upset that A.S. often slept during visits and told A.S. it would be very helpful if she would stay awake. The monitor told Mother that babies sleep, eat, and poop. Mother visits regularly. She blames DCFS for her problems and threatened to sue the case worker.

During a visit in June, A.S. began to cry; Mother was stressed and unsure what to do. She made a bottle of formula but failed to shake it thoroughly, causing the formula to stick to the bottle. A.S. moved her head and kicked away the bottle, yet Mother continued to put the bottle in the baby's mouth until the monitor told her that A.S. did not want to eat. After Mother was instructed to remove the bottle, A.S. began to cry and Mother "attempted to force the bottle into [A.S.'s] mouth when she was crying extremely loud." The monitor told Mother not to "force feed" the baby; Mother objected that she was not forcing A.S. and went to change A.S.'s diaper. A.S. stopped crying when Mother laid her down, then resumed crying once Mother picked her up. Mother did not attempt to soothe A.S., who cried for 15 minutes.

After being directed to sing, talk, and sway with A.S., Mother finally calmed A.S.

Mother tested positive for marijuana in May, June, and July; she also had a positive result for amphetamine. She denied marijuana use and attributed the amphetamine result to her prescribed Adderall medication. She failed to appear for testing on May 31 and June 5, 14, and 21.

During a visit with A.S. in July, Mother tried to feed A.S. with a Gerber product while A.S. cried; the baby gagged several times. Mother then tried a bottle until the monitor told Mother that A.S. did not want to eat. Mother stopped and soothed the baby until she fell asleep. A few days later, Mother was attentive to A.S.'s needs for food and changing; she had to be instructed to carry A.S. when A.S. became fussy. Mother took coaching well and was able to calm A.S. by using a soothing voice.

Mother received assistance to learn to keep a safe home but gave "lots of excuses to postpone the cleaning and sanitizing [of] her home." She keeps cats in the family room and there was cat litter strewn about. The outreach counselor said that Mother does not understand the gravity of the situation or do basic cleaning; the counselor opined that the home is unsafe for A.S. and Mother lacks energy to care for a baby. The DCFS social worker visited and saw a sewing needle on the floor and an unclean carpet. Mother said she spreads a blanket on the floor to cover everything.

On August 20, the court ordered DCFS to assess if Mother can have unmonitored visits or have A.S. returned to her care. In September, DCFS reported that Mother has a new psychiatrist who has seen her twice; he said she is taking her medication, doing well, and comes to appointments. Mother's psychologist

stated that she “has made very little progress” since April and is unable to complete a task.

DCFS learned that Mother had a violent dispute in her home requiring a police response. In September, Mother obtained a restraining order against roommate Christina Z. Mother declared that Christina threatened the lives of Mother, Mother’s cat, a roommate, and A.S. She was armed with a knife, bit and scratched Mother, and has hit Mother.

Christina contacted DCFS. She said Mother photographed the foster parents’ license plate to locate their home, with plans to kidnap A.S. and murder the caregivers. Mother and another roommate held Christina down, bound her legs and injured her, causing Christina to bite Mother. Mother threatened to kill Christina, who escaped and called police. She accused Mother of using drugs, prostituting herself, and wanting custody of A.S. so she could receive welfare benefits to buy drugs.

Mother explained that she picked up Christina from the streets to live in Mother’s home. Christina is a drug user making false claims. DCFS was concerned that Mother is associating with, in her words, a “convicted felon” and “psychotic.” Mother did not advise DCFS that Christina was in her home. Their physical altercation showed Mother’s poor judgment and reflects on her mental stability. On October 3, the court denied Mother’s request for unmonitored visits.

In November, DCFS reported that A.S. is doing well in foster care. Mother complies with court orders but blames DCFS for her shortcomings. During a September visit, Mother did not “take [A.S.’s] cues” and fed her even after the monitor said she was full. A.S. spat out the food yet Mother insisted she finish the jar. Mother was exhausted when A.S. crawled around and held

on to A.S. when she wanted to explore, causing the baby to cry. Mother said to A.S., “I would appreciate it if you didn’t look at [foster father] like he’s your mother; it really hurt my feelings.”

At an October visit, Mother stared at A.S. for five or six minutes in silence, until the monitor directed Mother to read to A.S. Mother was receptive to directions and began showing affection. She fed the baby in a rush with large spoonfuls. Mother took issue when told to slow down and reduce the portion so that A.S. would not spit it out. Mother wrote the social worker to “stop lying about me” and threatened to contact a lawyer.

The outside agency that monitors some of Mother’s visits wrote that she is warm, caring, affectionate, “more confident and less anxious,” and willing to take direction. She brings to visits appropriate food, toys, pacifiers, diapers. She has a strained relationship with the foster family since she photographed their car and license plate.

Mother tested positive for amphetamine in September and October. She failed to test on August 15. Mother takes Adderall, which caused the positive results. Her psychiatrist believes the medication has made a difference for her because it helps patients focus, though a parenting class is needed to make someone a better parent.

DCFS opined that Mother is progressing in her case plan by participating in parenting classes, individual therapy, drug testing, and psychiatric services. Her mental stability and limited support system continue to be areas of concern. She visits A.S. twice a week and wishes to see A.S. more often. She still needs coaching and support while caring for A.S., especially with food.

In December, when DCFS case workers visited her home, Mother said she could not clean because her vacuum was not working. After addressing the issue with Mother, she sent photos of her home the next day, saying she listened to “the corrective criticism. I woke up early, swept, mopped and put the sheets on the bed and crib.” The agency that assists Mother twice a week with parenting said she “still needs coaching.”

A contested review hearing was held on December 27 to resolve Mother’s request for custody of A.S. or unmonitored visits. The court took judicial notice of prior findings, the case plan, and orders. Counsel for A.S. joined with DCFS and requested that Mother continue reunification services and have monitored visits. Though Mother is compliant with the case plan, safeguards are needed for such a young child. Mother countered that she “is in total compliance with the case plan” and A.S. should be returned to her care.

The court said that Mother is “trying hard” and “making progress.” However, it wanted to see a “longer period of stability because this is such a young child,” and determined that “I don’t think it is yet time to return the baby.”

It ordered unmonitored visits once a week, subject to unannounced viewing by DCFS. It changed the drug testing to “upon suspicion.” Mother is testing negative for marijuana and the other positive result comes from Mother’s prescription drug. DCFS objected to unmonitored visits and the lack of drug testing but was overruled. The court continued its jurisdiction for six months, finding that returning A.S. to Mother would create a substantial risk of detriment to the child’s safety, protection, or well-being. It found that Mother “is not yet in substantial compliance with the case plan. She has made some progress

toward alleviating or mitigating the caus[es] necessitating placement.” DCFS has discretion to liberalize Mother’s visits.

DISCUSSION

At the review hearing held six months after disposition, “the court shall order the return of the child to the physical custody of his or her parent . . . unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment.” (§ 366.21, subd. (e)(1).)

Mother contends that she is entitled to custody because DCFS did not carry its burden of showing a substantial risk of detriment to A.S. We disagree. Reviewing the record in the light most favorable to the court’s order, we conclude that substantial evidence supports the finding that an extended time period for reunification services may mitigate protective issues and allow A.S. to be safely returned to Mother’s care. (*J.H. v. Superior Court* (2018) 20 Cal.App.5th 530, 535 [standard of review].)

DCFS had to show that the risk of detriment was “such that returning [the] child to parental custody represents some danger to the child’s physical or emotional well-being.” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400.) The court considers parental participation in services and progress made to eliminate the conditions that led to the child’s removal. (*Ibid.*; *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1143 [attending therapy and visiting complied with the case plan but the court considers “the parents’ progress and their capacity to meet the objectives of the plan” by ameliorating the reasons for removing the children].)

It is true, as Mother argues, that she participated in reunification services. She attended counseling, took prescribed medications, ceased using marijuana, participated in drug testing and parenting classes, and consistently visited A.S. The problem is Mother's failure to progress to the point where the danger to A.S. was eliminated or at least reduced to a level that did not present a substantial risk of harm to A.S.

A.S. was removed from Mother's custody when Mother was involuntarily hospitalized under section 5150. She screamed at her terrified newborn to "shut up," told hospital staff she "had thoughts of hurting the baby," and was filled with anxiety and unable to cope. She has threatened to harm or sue DCFS social workers since the inception of this case and blames them for her shortcomings. The court found evidence of "a mental health problem" when it sustained the petition.

Mother's mental stability and ability to safely care for A.S. since disposition continue to be called into question by her misguided decision to take in a roommate who is a "convicted felon" and "psychotic," without telling DCFS. This misadventure ended in a violent altercation inside Mother's home requiring police intervention and a restraining order because Christina threatened the lives of Mother, A.S., and another roommate.

Although Mother takes medications to help her focus, her psychologist stated on September 26 that Mother "has made very little progress" since April and "cannot complete a task." Mother engages in inexplicable behavior. She caused A.S.'s foster family to feel threatened by photographing their license plate. She said inappropriate things to an infant, telling A.S. not to sleep or look affectionately at the foster father because it hurts Mother's feelings.

One factor the court considers is whether a parent “demonstrate[s] an understanding of basic child care” or relies on the guidance of others when the child cries. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 690.) After months of parenting assistance, Mother tried more than once to force-feed A.S., causing the child to gag and spit out the food. The monitor had to instruct Mother that A.S. was full and should be soothed, not fed, when she cried. Mother “still needs coaching,” according to her parenting instructors.

Another aspect of basic child care is keeping a sanitary home for a child learning to crawl and walk. At disposition, the court deemed Mother’s filthy home unsafe for a vulnerable infant. She did not understand the gravity of the situation or do basic cleaning. Half a year after disposition she was admonished to clean up by case workers who came to her home shortly before the section 366.21 hearing.

In sum, the reports describing Mother’s behavior following disposition are substantial evidence supporting the court’s finding that it is too soon to return A.S. to parental custody. She does not keep a safe, clean home or understand what to do when A.S. cries. These problems, which led to A.S.’s detention, pose a substantial risk of detriment to a child of tender years.

The court has discretion to fashion an appropriate visitation order. We cannot disturb the order unless it is arbitrary, capricious, or patently absurd. (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356.) Visitation orders should encourage frequent parental visits “consistent with the well-being of the minor,” but “no visitation order shall jeopardize the safety of the child.” (§ 362.1, subd. (a)(1)(A), (B).) A parent’s interest in

her child cannot be maintained at the child's expense. (*In re Matthew C.* (2017) 9 Cal.App.5th 1090, 1105.)

The court took an incremental approach. It gave Mother one unmonitored visit weekly, plus monitored visits. This is not an abuse of discretion. Mother's parenting instructor stated that she "still needs coaching" and problems were observed during Mother's monitored visits. A mix of monitored and unmonitored visits enables the court to protect A.S.'s safety and well-being while seeing if Mother progresses to being able to care for A.S., without coaching or monitors.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

HOFFSTADT, J.